



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

**August 23, 1976**

**The Honorable N. Alex Bickley  
City Attorney  
City Hall  
Dallas, Texas 75201**

**Open Records Decision No. 138**

**Re: Whether city inspection reports on nursing home are public records under the Open Records Act.**

**Dear Mr. Bickley:**

Pursuant to section 7, article 6252-17a, V.T.C.S., the Open Records Act, you request our decision whether information collected by the City Health Department and other City agencies concerning a specified nursing home is excepted from required public disclosure by section 3(a)(1) of the Act, as information deemed confidential by statute, specifically, section 13 of article 4442c, V.T.C.S.

You received a request for "all reports, audits, inspections, evaluations and investigations conducted by the Dallas City Health Department and other City agencies concerning" a particular nursing home. You provided representative samples of various inspection reports and other information held by the City concerning the nursing home.

Article 4442c, V.T.C.S., provides for state licensing of convalescent and nursing homes by the Texas Department of Health Resources. Section 13 of that article provides:

Information received by the Licensing Agency [Texas Department of Health Resources] through filed reports, inspection, or as otherwise authorized under this law shall not be disclosed publicly, except as authorized elsewhere in this Act, in such manner as to identify individuals or institutions as defined herein except in a proceeding involving the question of licensure.

In Open Records Decision No. 61 (1974), we held that this provision was only applicable to information gathered solely for the purpose of state licensing. We said that information gathered by county health departments for county purposes is public information. We believe the same rule is applicable to a city which gathers information about a nursing home for its own purposes, as for example, for enforcement of local safety and health standards. We do not believe that the quoted provision was intended to make confidential that information which is otherwise public merely because it is shared by the State Department of Health Resources. Thus, if a city conducts inspections for its own purposes in accordance with its own standards, the information is public, even if it is used by the Department for its licensing purposes.

However, information gathered by or on behalf of the Department of Health Resources for state licensing purposes is excepted from required public disclosure by section 13 of article 4442c. Sections 5 and 9 of this licensing act contemplate that inspections and reports may be conducted by local agencies on behalf of the Department. We believe that such reports made in accordance with Department standards are made confidential by this statutory provision.

In regard to the information submitted in connection with this request, the forms denominated "Application for Renewal of State License to Operate a Nursing Home or Custodial Care Home and Annual Report Form," the Department of Health Resources' "Fire Marshal's Inspection Report for Nursing and Custodial Care Homes," and the Department's "Routine Inspection Report for Nursing and Custodial Care Homes" and the copy of the Department's inter-office memorandum reporting on an investigation of a complaint against the nursing home are excepted from required public disclosure.

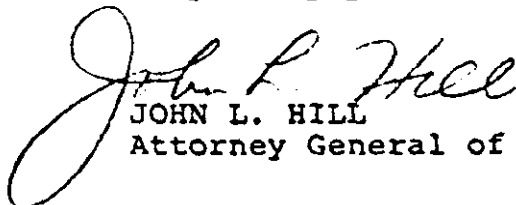
We do not believe that the inter-office memoranda prepared by the City concerning complaints and charges against the nursing home are excepted from required public disclosure by section 13 of article 4442c.

We note that compliance with the confidentiality requirement of section 13 of article 4442c, as to information gathered for state licensing purposes leads to the anomalous result that essentially the same information concerning a convalescent home may be public when compiled for one purpose by the City but is required to be withheld from the public if it is gathered for State licensing purposes on forms supplied by the State Department of Health Resources. The incongruity of the situation does not stop there, inasmuch as much of the same type of information is required by federal law to be made readily available to the public if the institution is certified to provide health care services under the federal Social Security Act Medicare and Medicaid programs (Titles XVIII and XIX). See Social Security Act Amendments of 1972, §§ 249C, 299D, 86 Stat. 1329, 1428, 1461-1462; 42 U.S.C. §§ 1306; 1395aa(a); 20 C.F.R. § 401.3(v); 45 C.F.R. 250.70.

A person seeking information about a state licensed nursing or convalescent home is prevented by section 13 of article 4442c from obtaining licensing information about the institution from the State Department of Health Resources, but if the institution is certified under the federal medicaid programs, as nearly all are, the citizen can obtain essentially the same information prepared by the same Department by applying to the Department of Public Welfare for it, where it is made available in accordance with the federal regulations. Thus, section 13 is inconsistent with the purpose and spirit of the Texas Open Records Act, the federal law and regulations, and is ineffective in protecting the information it was designed to deny to the public.


The information requested is public, except that prepared solely in connection with state licensing for and on behalf of the State Department of Health Resources on their forms and according to their standards.


Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

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APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee

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